



# United States Department of the Interior

OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20240

SA4082603

AUG 22 1994

Dr. John H. Zirschky  
Acting Assistant Secretary (Civil Works)  
Department of the Army  
Washington, D.C. 20310

Dear Dr. Zirschky:

In accordance with provisions of the December 21, 1992, Clean Water Act Section 404(q) Memorandum of Agreement (MOA) between the Department of the Interior (Department) and the Department of the Army (Army), I am requesting your review of the Pittsburgh District (District) Engineer's decision to issue a Section 404 permit for the project described in Public Notice 92-67, Permit Application No. 92073.

The permit would authorize the applicant, Mr. George B. Zamias, to discharge fill material into 12.7 acres of palustrine emergent, scrub-shrub, forested, and shallow open water wetlands to expand an existing retail shopping center in Crawford County, Pennsylvania. The proposed permit would provide, in part, after-the-fact permit approval for the unauthorized placement of fill material in wetlands as described in the District's January 28, 1987, Cease and Desist Order to the applicant. After review of the District's July 15, 1994, notification to the Fish and Wildlife Service (Service) and analysis of project site values and impacts (enclosed), I have determined that this case warrants elevation in accordance with criteria found in Part IV of the 1992 MOA (Elevation of Individual Permit Decisions).

The project site is situated in the headwaters of the French Creek watershed, which has been designated a focus area for fish and wildlife habitat restoration activities by the Service's Ohio River Ecosystem Management Team. In addition, Central Crawford County has been designated a focus area for wetland protection and restoration as part of the Lower Great Lakes-St. Lawrence Joint Venture Segment of the North American Waterfowl Management Plan. Headwater wetlands in the watershed help maintain the excellent water quality in French Creek, which supports 66 species of fish--more than any other stream in Pennsylvania. French Creek also provides habitat for 25 species of freshwater mussels, including 2 species that are federally listed as endangered.

Issuance of a Federal permit for the Meadville Mall expansion project will have a substantial and unacceptable adverse impact on the diverse wetland complex at the project site, which I have determined to be an aquatic resource of national importance. The palustrine wetlands on the site form a mosaic of aquatic beds, emergent, deciduous forested, mixed deciduous forested-shrub, deciduous scrub-shrub, mixed deciduous shrub-emergent, and open water habitat types. Botanical surveys of the wetland complex have

revealed the presence of over 193 species of plants including one uncommon species, Juncus articulatus, found in only 27 sites in Pennsylvania.

The diversity of plant species and wetland types provides excellent habitat for a variety of wildlife species. Fifty-two bird species have been documented using the wetlands, including 11 confirmed breeders and 34 probable breeders. Many of these species are migratory trust species of interest to the Department which depend upon wetlands and forested habitat for resting, feeding, and nesting. The Meadville Mall wetlands are within the migratory corridor for 12 waterfowl species and are regularly used by resident and migrating birds. Emergent wetland areas on site are frequently flooded for extended periods of time and provide habitat for waterfowl to rest and feed. Service biologists have observed mallards and wood ducks utilizing these areas during several site visits. In addition, two State-designated threatened species, the American bittern and least bittern, historically occurred in the area and may be occasional visitors to the wetland. Service biologists have observed numerous other species of reptiles, amphibians, and mammals during numerous site visits. Forage fishes of importance as a food source for wetland-dependent birds were also observed in the shallow open water of the site.

Expansion of the mall, as proposed, would eliminate 12.7 acres of wetlands, and would reduce habitat and plant species diversity of the remaining on-site wetlands. In addition, 35-40 acres of on-site and off-site wetlands would be adversely affected by changes in hydrology and increases in polluted runoff from the expanded mall.

The mosaic of wetland types at the mall site, and the diversity of plant and animal species supported by this wetland complex, would be difficult, if not impossible, to replace. Therefore, I have concluded that compensatory mitigation in this case will have an unacceptably high risk of not replacing in-kind wetlands losses. The lack of a specific mitigation plan exacerbates this already high risk. Finally, I find that proposed mitigation would not reduce impacts below the "substantial and unacceptable" threshold.

Because the mall expansion would destroy very high value wetlands, and because compensatory mitigation would have an unacceptably high risk of not replacing in-kind wetland functions and values, I do not believe this project should be authorized as currently proposed. However, I believe there is a less damaging, practicable alternative to mall expansion that would avoid impacts to aquatic resources of national importance. The Department would not be opposed to expansion of the mall in a configuration that would extend the mall from the west end of the existing structure. This alternative could accommodate a modest expansion of the mall and would require filling approximately 2 acres of lower value wetlands on the site that are isolated as a result of previous development. The 2 acres of wetlands lost under this alternative could be compensated on-site by removal of excess fill placed in wetlands during construction of the existing mall, and the conversion to wetland of a small portion of deciduous forest along the east side of the existing wetlands.

In summary, I believe higher level review of the proposed permit decision is warranted in this case because the project would have substantial and unacceptable impacts on high value wetlands for which the successful replacement of in-kind functions and values is improbable. I am also concerned about the Corps of Engineers continued willingness to issue permits without a detailed compensatory mitigation plan. While I support the District's requirement for a substantial performance bond, I believe such bonds should be required in conjunction with specific, detailed mitigation plans, not as a substitute for such plans at the time of permit issuance.

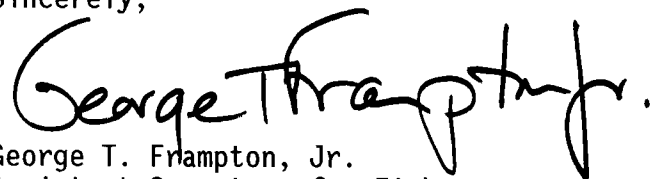
In conclusion, I request that you take the following actions:

1. Instruct the District to reevaluate the practicability of the alternative for mall expansion previously suggested by the Service, and as described herein.
2. Instruct the District that should they determine that the alternative recommended by the Service is practicable, the District should revise the draft permit as necessary to authorize only such fill as needed to implement the alternative, and require the applicant to develop a mitigation plan in consultation with the Service, for approval by the District.
3. Instruct the District that should they determine that the alternative recommended by the Service is not practicable, the District should deny the permit for the proposed project.

If your decision in this matter is contrary to these recommendations, I believe a specific mitigation plan should be prepared in consultation with the Service, and approved by the District, before a permit is issued.

Additional information is enclosed to support the Department's concerns and recommendations relating to the proposed permit decision. I request your review of the decision by the District Engineer to proceed with permit issuance for the Meadville Mall expansion project.

Sincerely,

A handwritten signature in dark ink, reading "George T. Frampton, Jr." in a cursive style.

George T. Frampton, Jr.  
Assistant Secretary for Fish  
and Wildlife and Parks

Enclosure



DEPARTMENT OF THE ARMY  
OFFICE OF THE ASSISTANT SECRETARY  
CIVIL WORKS  
108 ARMY PENTAGON  
WASHINGTON DC 20310-0108



REPLY TO  
ATTENTION OF

21 SEP 1994

George T. Frampton, Jr.  
Assistant Secretary for Fish  
and Wildlife and Parks  
U. S. Department of the Interior  
Washington, D.C. 20240

Dear Mr. Frampton:

This is in response to your letter of August 22, 1994, in which you requested our review of issues related to a Department of the Army permit application being considered by the Army Corps of Engineers Pittsburgh District. The permit would allow Mr. George B. Zamas to fill 12.7 acres of wetlands to enlarge the Meadville Mall Shopping Center in Crawford County, Pennsylvania. An estimated 40,000 cubic yards of material would be required to fill the wetlands and prepare the site.

Your request for elevation was made pursuant to Part IV of the 1992 Section 404(q) Memorandum of Agreement (MOA) between the Department of the Interior and the Department of the Army. Your request was based on the Fish and Wildlife Service's concerns about site values and impacts, mitigation, and the alternative approved by the Corps District. Part IV of the MOA requires that a case must pass two tests to be elevated: 1) the case must involve aquatic resources of national importance (ARNIs); and 2) the case must result in unacceptable adverse impacts to ARNIs.

We have carefully reviewed the concerns raised in your letter, the analysis you provided, the Pittsburgh District's decision documents and draft permit. We had staff level meetings with your representatives from the field at the site and here in Washington, concerning the case. Based on our evaluation, we find that the District's permit decision will not result in unacceptable adverse impacts to aquatic resources, after consideration of the proposed mitigation. The following factors were important to these findings.

From a historic perspective the resources that existed on the site were common in the local area and were degraded by human activities. The wetlands currently on the site appear to be the result of the activities that occurred during the original mall construction and the applicant's activities in 1987. The clearing and grubbing that was stopped by the Corps in 1987 changed the landform with very little deposition of fill material. The resulting conditions now support a diversity that appears to be unique for such a small area.

The types of wetlands currently on the site are considered common resources in the county. The applicant conducted a survey for comparable wetlands within a 50 mile radius of the mall location. Those findings indicated that each wetland type found on the mall site is also found in relatively large areas elsewhere in the vicinity. The site diversity in wetland types makes an ARNI determination difficult, because that diversity is of such local importance. Because the proposal does not yield unacceptable impacts on the area, we did not reach a conclusion whether the local diversity of common wetland types represent an ARNI. We would be pleased to discuss this consideration with you and the other interested agencies in a more general framework.

Based on a consideration of the mitigation to be required, we find there is no net loss of wetlands values and thus, there are no unacceptable adverse impacts to the aquatic resources. The quantity of compensatory mitigation being required by the District and by the State through its permitting authority, appears to be adequate in offsetting the acreage losses that will occur on the site. The quality of that mitigation, on the other hand, is of great concern in our decision. The situation appears to demonstrate that it is possible to create, through minor land alterations, the high diversity seen at this site. However, that diversity did not occur by design. To compensate for the loss of this important local diversity, the remaining wetlands on the applicant's property must be protected, and off site mitigation carefully designed and implemented. The District must use the necessary expertise, including that of the Fish and Wildlife Service, to ensure that the mitigation plans of the applicant are adequate.

Because there are neither unacceptable adverse impacts to the aquatic resources, nor a net loss of wetlands, we have decided not to review this case, and are notifying the Corps that the District may proceed with final action on the permit decision. We will, however, caution them that approval of the applicant's mitigation plan must include full consultation with the Fish and Wildlife Service.

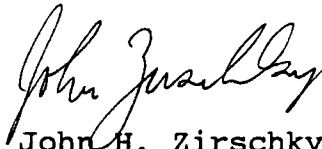
There were other concerns expressed in your letter, and our views on those follow. The District considered numerous mall designs during their evaluation. We concur in the Corps' determination that what is to be approved represents the least environmentally damaging, practicable alternative for the expansion of the mall. The additional alternative discussed in your letter, when considered with a view toward the need for adequate parking,

would require additional space to be practicable. That addition would increase the impacts to the wetlands, making the alternative comparable to other alternatives considered in the District's decision document. Therefore, we see no need to require a reconsideration of alternatives.

Finally, you expressed concern about the District issuing the permit before a mitigation plan has been prepared. The amount and type of mitigation to be required have been determined during the evaluation process. The permit conditions will require that a plan be prepared by the applicant and approved by the District, such that the mitigation work is undertaken coincidentally with construction of the mall expansion. There is also a substantial bond required to ensure the work is accomplished and remains viable. These measures are consistent with current policy, which reflects our concern that the regulated public must be held accountable for mitigation commitments, without facing continuing uncertainty that a permit will ever be issued. The terms of the permit are sufficient to allow mitigation planning and site selection to be based on defined impacts and defined expectations.

Because we recognize the importance of these wetlands to the local area, we have been careful to satisfy ourselves that adequate steps have and will be taken to ensure that there is no net loss of wetland values resulting from this permit action. The efforts of you and your staff in bringing this case to our attention and their efforts in the future development of an adequate mitigation plan, reflect the importance we all place on protecting aquatic resources. Should you have any questions or comments concerning our decision in this case, do not hesitate to contact me or Mr. Jack Chowning at (202) 272-1725.

Sincerely,



John H. Zirschky  
Acting Assistant Secretary of the Army  
(Civil Works)



DEPARTMENT OF THE ARMY

U.S. Army Corps of Engineers  
WASHINGTON, D.C. 20314-1000

REPLY TO  
ATTENTION OF:

CECW-OR

3 OCT 1994

MEMORANDUM THRU COMMANDER, OHIO RIVER DIVISION

FOR COMMANDER, PITTSBURGH DISTRICT

SUBJECT: Request for Section 404(q) Elevation, Meadville Mall

1. On 21 September 1994, the Acting Assistant Secretary of the Army (Civil Works) (AASA(CW)) responded to a request by the Department of the Interior (DOI) for higher level review of a permit proposed by the U.S. Army Corps of Engineers Pittsburgh District. The project proposed by Mr. George D. Zamias, involves the filling of 12.7 acres of wetlands for the expansion of a commercial shopping mall in the vicinity of Meadville in Vernon Township, Crawford County, Pennsylvania.

2. The request from DOI was made pursuant to Part IV of the 1992 Section 404(q) Memorandum of Agreement between the Department of the Army and DOI. The main issues DOI presented for consideration were based on their conclusion that substantial and unacceptable adverse impacts to an aquatic resource of national importance would occur. In addition, DOI asserted that a less environmentally damaging practicable alternative appears to be available.

3. By way of the enclosed letter, the AASA(CW) notified DOI that the District may proceed with final action on the permit decision. The AASA(CW) notes that the Meadville Mall wetlands are locally important wetlands, due to their diversity, but does not provide a conclusion concerning their status as an aquatic resource of national importance. The AASA(CW) did not concur with DOI that the permit decision will result in unacceptable adverse impacts to aquatic resources of national importance, after consideration of the proposed mitigation. Nevertheless, the AASA(CW) did emphasize the importance of the District ensuring the quality of that mitigation. The AASA(CW) concurs with the District that the remaining wetlands on the site must be protected and the off site mitigation must be carefully designed and implemented, utilizing necessary expertise, including that of the U.S. Fish and Wildlife Service. The conclusion by the AASA(CW) that it is appropriate for the District to issue the permit prior to obtaining a specific mitigation plan was based on three factors. First, the District in its permit conditions requires approval of a specific mitigation plan prior to any construction in waters of the United States. Second, the District determined that it is technically feasible to mitigate for the wetland functions and values that will be lost as a result of the permit. Third, the District determined that

CECW-OR


SUBJECT: Request for Section 404(g) Elevation, Meadville Mall

locations are available within the general area where mitigation can be pursued by the permittee. In addition to these three factors, the District also requires by permit condition a substantial bond to ensure completion of the mitigation. Regarding practicability of alternatives, the AASA(CW) concluded that the alternative proposed by DOI, when considered with adequate parking, has comparable wetland impacts to other alternatives. Therefore, a reconsideration of alternatives is not required.

4. In accordance with Part IV(g)(1) of the Memorandum of Agreement with DOI, the District may proceed with a final decision. As noted above, the AASA(CW) has expressed the importance of ensuring successful, quality compensatory mitigation, which is being required as a special condition to the proposed permit. The District must ensure that the remaining wetlands be protected and that the mitigation plan be carefully planned and implemented. This will include full consultation with the U.S. Fish and Wildlife Service regarding the mitigation plan developed by the applicant based on guidance from the District. The District is also encouraged to utilize any other available expertise to ensure that the mitigation plan is carefully designed and successfully implemented.

5. If you have any questions or comments, please call Ms. Cheryl Smith at (202) 272-1780.

Encl

  
STANLEY G. GENECA  
Major General, USA  
Director of Civil Works